

## MEMORANDUM

TO: Indiana State Board of Education

FROM: Kevin C. McDowell, General Counsel

RE: Curing of Ambiguity; Certification of Proposed Governing Body Selection Plan:  
**Board of School Trustees, Tell City-Troy Township School Corporation**

DATE: August 21, 2007

Petitioners within the school district initiated a proposed plan to change the method of selection for the Board of School Trustees ("school board"). After the Perry County Circuit Court Clerk certified the signatures, the Petitioners' plan was presented to the school board. The school board reviewed the plan but declined to adopt it. The school board, as required by I.C. § 20-23-8-14, then published the Petitioners' plan in a newspaper of general circulation for 120 days. No additional plans or protests were filed during this period. The school board then forwarded the Petitioners' plan to the State Board of Education for review, as required by I.C. § 20-23-8-15. I reviewed the proposed plan and found that Petitioners' plan satisfies the criteria of I.C. §§ 20-23-8-7, 20-23-8-8, except for one ambiguity.

The principal difference between the Petitioners' plan and the existing plan is that, under the Petitioners' plan, the five-member school board could reside anywhere in the school district, as permitted by I.C. § 20-23-4-27(c)(1), whereas the current plan has a five-member school board where two members must reside in Tell City, two members in Troy Township, and one member elected at-large, as permitted by I.C. § 20-23-4-27(c)(2). Neither plan staggers the election of school board members and neither plan limits a school board member from succeeding himself/herself in office. Both require candidates to be at least 21 years of age and have resided in the school district for at least one year, although the Petitioners' plan does not indicate how the one-year residency period is to be calculated. The current plan indicates the one-year period is calculated based on when one is elected.

The State Board of Education has the authority to cure any ambiguities in a submitted plan. See I.C. § 20-23-8-15(b)(2)(A). To that end, I recommend to the State Board that it amend Petitioners' plan under rhetorical paragraph 2(e) to indicate that the one-year residency within the school corporation's district is to be calculated from the election date itself. This would be in keeping both with rhetorical paragraph 2(c) and with the intent of the current governing body

selection plan, which has a 24-month residency requirement. Both the latter references are calculated from the date of election. Petitioners simply left out a method for calculation. I have attached a copy of the Petitioners' plan containing the recommended language intended to cure the ambiguity (see bold-face type). I have since received a telephone call from the representative for the Petitioners. He has indicated the Petitioners do not object to the proposed amendment, and that the amended language had been their intent.

I do not believe the two plans can be reconciled by the State Board of Education under I.C. § 20-23-8-15. However, the Petitioners' plan, as amended, is eligible to be certified by the State Board. Because there are two competing plans (Petitioners' plan and the current governing body selection plan), certification of Petitioners' plan will result in a special election under I.C. § 20-23-8-16 through I.C. § 20-23-8-18.